

PD-0618-16

EX PARTE

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IN THE COURT OF
COURT OF CRIMINAL APPEALS
12/4/2017
CRIMINAL APPEALS CLERK

CLINTON DAVID BECK

OF TEXAS

**STATE'S MOTION TO SEAL OR REMOVE BRIEFS FROM THE
COURT'S WEBSITE**

TO THE HONORABLE JUDGES OF SAID COURT:

Now comes the State of Texas, Appellee in the above-styled and -numbered cause, and moves this Honorable Court to seal the briefs and remove them from public online access, and for good cause would show the following:

I.

Appellant was charged by indictment with Improper Relationship Between Educator and Student and Online Solicitation of a Minor on April 13, 2011 in the 207th Judicial District Court of Comal County. After pleading guilty to Count II, Improper Relationship Between Educator and Student, the trial court sentenced Appellant to ten years confinement and suspended the sentence for a period of ten years. Appellant was also required to forfeit his teaching license and not apply for any future teaching license in the United States. On September 4, 2014, Appellant filed an Application for Writ of Habeas Corpus under article 11.072 of the Texas Code of Criminal Procedure. After the trial court denied the Application, Appellant appealed. The Third Court affirmed the judgment of the trial court, and this Court

recently affirmed the Third Court’s decision. *Ex parte Beck*, 03-14-00818-CR, 2016 WL 2732131, at *8 (Tex. App.—Austin May 4, 2016), *aff’d*, PD-0618-16, 2017 WL 5632978 (Tex. Crim. App. Nov. 22, 2017) (in its opinion, the Court also demonstrated its concern for the juvenile victim by using the victim’s pseudonym). Although the parties’ briefs are not available on the Third Court’s website, it appears the State’s and Appellant’s Briefs are accessible as a PDF on this Court’s website as of December 1, 2017.

II.

The Third Court follows an apparent policy of not making briefs related to subjects like sex offenses generally available.¹ Such a policy is desirable to prevent perpetual embarrassment to victims – particularly juvenile victims – and to allow them to move on with their lives as smoothly as possible. As one law review article has observed, particularly in the age of internet search engines like “Google”:

Appellate courts are leading purveyors of *incredibly intimate and embarrassing information about both adults and children who happen to be pulled into the judicial system*. These four cases [including sex offenses] are but a small fraction of the hundreds of judicial opinions posted to the Internet each day by appellate courts around the country. In light of the nature of information disclosed and the ease with which

¹*See, e.g.*, <http://search.txcourts.gov/Case.aspx?cn=03-14-00818-CR&coa=coa03> (the instant case); <http://search.txcourts.gov/Case.aspx?cn=03-12-00669-CR&coa=coa03>; <http://search.txcourts.gov/Case.aspx?cn=03-14-00639-CR&coa=coa03>; *see also Orosco v. State*, 03-15-00383-CR, 2017 WL 2873352, at *1 (Tex. App.—Austin June 29 2017,) (not designated for publication) (In an aggravated sexual assault case, the Court’s opinion referred to the victim using initials: “[t]he victim in all three offenses was A.V.” *petition for discretionary review filed* (Sept. 7, 2017)).

it can be obtained, *one might expect carefully crafted rules or procedures to protect the privacy of persons thrust into the judicial system, such as the use of initials or pseudonyms instead of names.* There are, however, few and sometimes inconsistent rules or procedures applied by appellate courts in deciding whose *identity will be protected and whose will be exposed in very public judicial opinions that will follow them for the rest of their lives.*

See Joel M. Schumm, *No Names, Please: The Virtual Victimization of Children, Crime Victims, the Mentally Ill, and Others in Appellate Court Opinions*, 42 Ga. L. Rev. 471, 474 (2008) (emphasis added).²

Because the parties' briefs are currently available to the general public and include the substance of communications between the Appellant – including the juvenile victim's own statements – the State respectfully moves the Court to remove the publicly available briefs from its website to avoid the dissemination of materials which may interfere with the privacy and future welfare of the victim, who was only a juvenile at the time of the offense. See Tex. R. App. P. 2 (“On a party’s motion or on its own initiative an appellate court may--to expedite a decision or for other good cause--suspend a rule’s operation in a particular case and order a different procedure....”). The Legislature has clearly indicated its intent

²C.f. Tex. Fam. Code Ann. § 109.002 (West, Westlaw through 2017 R.S.) (In SAPCRs, “On the motion of the parties or on the court's own motion, the appellate court in its opinion may identify the parties by fictitious names or by their initials only”); *Texas State Employees Union v. Texas Dept. of Mental Health & Mental Retardation*, 746 S.W.2d 203, 205 (Tex. 1987) (citing Tex. Const., art. 1, §§ 8, 9, 10, 19 and 25, and holding that the Texas Constitution protects personal privacy from unreasonable intrusion, yielding only when the intrusion “is reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means”).

to prevent potentially embarrassing records from following a juvenile for life, and it would be bizarre to provide greater protection for juvenile offenders than for juvenile victims of offenses. *See* Tex. Fam. Code Ann. § 58.253 (West, Westlaw through 2017 R.S.); Tex. Fam. Code Ann. § 58.255 (West, Westlaw through 2017 R.S.) (juvenile offenders entitled to have all records related to the person's juvenile matters sealed without applying to the juvenile court in certain circumstances).

III.

WHEREFORE, PREMISES CONSIDERED, the State's counsel respectfully prays that this Honorable Court ensure the briefs are no longer publicly available on the Court's website. The State also prays for all other relief to which it may be entitled.

Respectfully submitted,

/s/ Joshua D. Presley

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CERTIFICATE OF SERVICE

I, Joshua D. Presley, Assistant Criminal District Attorney for the State of Texas, Appellee, hereby certify that a true and correct copy of this *State's Motion* has been delivered to Appellant CLINTON DAVID BECK's attorneys in this matter:

Terri R. Zimmermann
Terri.Zimmermann@ZLZSlaw.com
&
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By electronically sending it to the above-listed email addresses through efile.txcourts.gov, this 3rd day of December, 2017.

/s/ Joshua D. Presley
Joshua D. Presley

CERTIFICATE OF CONFERENCE

I certify that I have conferred or made reasonable attempts to confer with all other parties about the merits of this motion and whether the parties oppose the motion. A phone call and message left for Appellant's attorney Ms. Zimmermann at around 2:47 p.m. on December 1st was not returned prior to the filing of the instant motion.

/s/ Joshua D. Presley
Joshua D. Presley